

ELIJAH MANSHIP ET AL. }
 vs. } MARCH TERM, 1849.
 WM. S. EVITTS ET AL. }

[CONVERSION OF REALTY INTO PERSONALTY—RIGHT OF SURVIVING HUSBAND TO
 PERSONAL PROPERTY OF HIS WIFE.]

WHERE real estate is sold under a decree of this court, the mutation from realty to personalty is complete when the sale is ratified by the court, and the purchaser has complied with the terms of it, by paying the purchase money, if the sale is for cash, or by giving bonds if the sale is on credit.

In this case, the sale was ratified, and the purchaser had complied with the terms by paying the cash installment of purchase money, and giving bonds with sufficient surety for the balance, and the Auditor had assigned a portion of the proceeds to M. and wife, in right of the wife, who was one of the heirs at law of the deceased, whose estate was sold. After this, the wife died, leaving her husband surviving her, and having had issue during coverture, which issue was then dead. HELD—

That the change from real to personal estate was complete before the death of the wife, and the proportion of the purchase money which had been assigned to the husband and wife, must be regarded as a *chose in action*, and as such survived to the husband.

[A decree was passed on the 23d of May, 1845, for a sale of the real estate of Jonathan Evitts, late of Caroline county, deceased, for the purpose of partition among his children and heirs at law, upon a bill, filed by such of the heirs as were of age, against those that were infants. After the sale and compliance on the part of the purchaser, and report of the auditor, the dates of which are stated in the opinion, Elijah Manship, one of the complainants, filed a petition, stating the death of his wife Louisa, and claiming, as surviving husband, the whole of the sum assigned to him, in right of his said wife. The other heirs at law, answered this petition, insisting, that he was entitled only to tenancy by the courtesy therein. Upon this petition, the following opinion was delivered:]

THE CHANCELLOR :

The trustees' report in this case, which was filed on the 7th of October, 1846, states, that the purchaser, William Du-